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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,518	09/28/2006	Kazumasa Kurita	296836US3PCT	1810
22850	7590	06/25/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3641	
			NOTIFICATION DATE	DELIVERY MODE
			06/25/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/594,518	<b>Applicant(s)</b> KURITA ET AL.	
	<b>Examiner</b> Bret Hayes	<b>Art Unit</b> 3641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15 is/are rejected.
- 7) ☒ Claim(s) 10-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07NOV06,13NOV07,14DEC07</u> .                                 | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 03 MAR 08 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. There was apparently no 1449 received.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding at least claim 1, the phrase "platelike" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "platelike"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Art Unit: 3641

5. Further regarding claim 1, it would appear that the housing is horizontally fixed and not vertically fixed.

6. Re claim 3, it is unclear what is intended by a top plate or a bottom plate 'vertically' located on the housing as the drawing figures would appear to disclose only the top plate including an outwardly protruding projection and that horizontally located.

7. Any unspecified claim is rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,951,040 to McFarland et al. ('040).

10. Re claim 1, '040 discloses the claimed invention including a gas generator, comprising a gas generating agent **98** ignited by ignition means **92** for generating gas by combustion and a housing including a gas generating agent storage chamber filled with said gas generating agent therein while said housing is vertically held and fixed by a pair of platelike members **42, 62** arranged in parallel with each other, further comprising a deformable area **100** to be deformed to decrease the vertical outside dimension of said gas generator when fixed by said pair of platelike members.

Art Unit: 3641

11. Re claims 2, '040 further discloses wherein said deformable area includes a plastic deformable area to be plastically deformed when held and fixed by said pair of platelike members, A set forth at col. 3, line 56 through col. 4, line 14.

12. Re claim 3, '040 further discloses at least either a top plate or a bottom plate vertically located on said housing including an outwardly protruding projection **104** and said projection constituting said plastic deformable area.

13. Re claim 4, '040 further discloses wherein said projection is provided on a part of said housing partitioning/forming said gas generating agent storage chamber, Fig. 2, for example.

14. Re claim 8, '040 further discloses an elastic deformable area. Regarding this and plastic deformable above, as recited the claim merely requires the capacity to be so deformed. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138. In this case, '040 is certainly capable of both plastic and elastic deformation.

15. Re claim 9, in view of claims 1, 3 and 8 above, '040 discloses these limitations.

16. Re claim 15, in view of claims 1, 3 and 8 above, '040 discloses these limitations.

***Allowable Subject Matter***

17. Claims 10 – 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902 or email address [bret.hayes@uspto.gov](mailto:bret.hayes@uspto.gov), which is preferred. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (571) 272 – 6873.

/Bret Hayes/

Primary Examiner, Art Unit 3641

24-Jun-08